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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/616,144

07/08/2003

Sandro Panaioli

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08/12/2005

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EXAMINER

DONOVAN, MAUREEN C

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,144

Applicant(s)

PANAIOLO ET AL.

Examiner

Maureen C. Donovan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/13/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to communications: Amendment filed 13 June 2005.
2. Claims 1-4 and 6 are pending.
3. Claim 5 has been cancelled.
4. The rejection to claim 6 under 35 USC 112 second paragraph is withdrawn in view of the current claim amendments.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1, 2, 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over SirRedhawk (Google Usenet discussion forum post) in view of "Freezing Lasagna" (Google Usenet discussion forum post) and Nilsson (European Patent number 882 406).

SirRedhawk discloses food product comprised of at least three pasta layers the pasta layers being interleaved with one or more sauce layers (see Page 2, lines 23-26), as by following the directions disclosed by SirRedhawk, a food product would be generated that had at minimum three pasta layers and two layers of sauce. SirRedhawk further discloses that at least two of the pasta layers are provided for by a rectangular pasta sheet extending around the remaining layers of the product and sealed along two opposing edges and that the seal along the opposing edges of the rectangular pasta sheet provides one of the pasta layers within the product (see Page 2, lines 18-21). Note that the strips of pasta, also called Italian lasagna pasta, as disclosed by SirRedhawk are interpreted to be rectangular as that is the common shape of lasagna pasta.

SirRedhawk disclosed all the features of the instantly claimed invention except for that the product is frozen, the specific type of sauce layers the pasta product would be comprised of or the weight of the product or a packaged frozen food comprising a plurality of pasta products.

"Freezing Lasagna" taught freezing a lasagna product for consumption at a later time period (see Page 1). It would have been obvious to one of ordinary skill in the art at the time of

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the invention to have frozen the lasagna of SirRedhawk as taught by "Freezing Lasagna" since both are directed to methods of preparing and serving lasagna and since freezing the lasagna would allow the lasagna to be conveniently prepared before it is served while keeping it fresh and preserved during storage.

Nilsson taught that the sauces used in lasagna are conventionally cheese-flavored sauces and vegetable and/or meat flavored sauces (see Column 1, lines 12-14). To use the sauce types taught by Nilsson in the food product of SirRedhawk would have been obvious to one of ordinary skill in the art at the time of the invention since both are directed to lasagna products, since Nilsson teaches that these sauces are conventionally utilized in making lasagna, and since utilizing different types of sauces in the lasagna of SirRedhawk would have been obvious to one of ordinary skill in the art in order to change the taste profile of the food product according to consumers tastes and to add variety to the types of lasagnas that could be produced.

Nilsson taught the unit weight of a segment of frozen layered pasta product should be from 20 to 80 grams. Nilsson further taught that keeping the segment weight within this range is important for proper reheating of the frozen segment (see Column 3, lines 20-22). Nilsson taught that the method with which the lasagna is prepared is not essential, and that the teachings could be applied to any pasta product that was comprised of fillings arranged between layers of pasta (see Column 4, lines 1-5). It would have been obvious to one of ordinary skill in the art at the time of the invention to prepare the lasagna of SirRedhawk as modified by "Freezing Lasagna" to a weight within the range taught by Nilsson in order to provide a lasagna product with a convenient reheat time. In addition attention it would have been obvious to one of ordinary skill in the art to scale the recipe of SirRedhawk as modified by "Freezing Lasagna" down, as it is a conventional practice in the art to scale up or down food recipes depending on the consumers preference or serving requirements and since mere scaling down of prior art capable of being scaled down, would not establish patentability in a claim to an old product so scaled.

Nilson taught freezing lasagna and packaging multiple lasagnas together in one package, and that the number of segments depends on the amount that is needed for one lasagna portion depending on the consumers preference(see Column 5, lines 39-44). And again it is noted that Nilsson taught that the method with which the lasagna is prepared is not essential, and that the

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teachings could be applied to any pasta product that was comprised of fillings arranged between layers of pasta (see Column 4, lines 1-5). It therefore would have been obvious to one of ordinary skill in the art at the time of the invention to have packaged the frozen lasagna of SirRedhawk as modified by "Freezing Lasagna" with other lasagna segments according to the amount of lasagna that is required to be made in one preparation

Response to Arguments

Applicant's arguments filed 13 June 2003 have been fully considered but they are not persuasive. At page 3 of the response, applicant states that the teaching of SirRedhawk is ambiguous and is different from what is instantly claimed. Applicant also states at page 3 of the response that the references are not applicable or combinable because they do not address the same problem as the instantly claimed invention. This is not deemed persuasive.

It is submitted that the examiner did not admit that SirRedhawk was ambiguous. The applicant points to the paragraph bridging pages 3 and 4 of the Office Action mailed 12 January 2005, in which the examiner states that SirRedhawk discloses a pasta sheet that extends around all the layers of a layered pasta product and is folded over those layers and acts to seal in the fillings contained in the pasta product. Further the examiner states that the Office interpreted the reference to disclose that the opposing sides of the pasta sheet are sealed together, since that would be inherently necessary in order to successfully "seal in the fillings" as disclosed by SirRedhawk. The examiner currently identifies no ambiguity in these statements, nor has the applicant pointed out why the disclosure is ambiguous. The applicant has so far provided no positive or persuasive arguments or evidence to show why the reference is ambiguous, nor has pointed out what part of the claim the reference is ambiguous about.

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In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the lasagna's maintain integrity during re-heating) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). While SirRedhawk and Nilsson are directed to traditional lasagna products, the claim language still encompasses a traditional lasagna product, further; applicant has not distinguished the claim language from the SirRedhawk or Nilsson reference. The fact that Nilsson does not address the technical problem of the instant invention does not preclude the reference of Nilsson being combined with that of SirRedhawk.

2. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over SirRedhawk in view of "Freezing Lasagna" and Nilsson as applied to claims 1, 2, 3 and 6 above, and further in view of Mattson (US Patent number 5 077 066).

SirRedhawk as modified by "Freezing Lasagna" and Nilsson disclosed all the features of the instantly claimed invention except for the ratio of pasta to sauce in the product.

Mattson teaches a frozen food product wherein the proportion of pasta to the remaining ingredients in the product is in the range from 5:95 to about 90:5 wt/wt (see Column 6, line 27). The remaining ingredients as taught by Mattson are sauce concentrate, meat and vegetables, which is defined by applicant in Claim 3, as sauce. The ratio claimed by applicant is within the range taught by Mattson. Applicant discloses in the specification that the ratio of pasta to sauce is important in order to "provide favorable textural contrasts" (see Specification, page 3, line 16-19). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a ratio in the range taught by Mattson in order to "assure good mouth feel" (see Column 2, lines 56-58) in the pasta product of SirRedhawk as modified by "Freezing Lasagna" and Nilsson.

Applicant's arguments filed 13 June 2005 have been fully considered but they are not persuasive. Applicant's arguments concerning the rejection of Claim 4 under 35 U.S.C. 103(a) over the combination of SirRedhawk, "Freezing Lasagna" and Nilsson with Mattson reflect the

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arguments made against the rejection of Claims 1, 2, 3 and 6 over SirRedhawk in view of "Freezing Lasagna" and Nilsson, therefore as the rejection of Claims 1, 2, 3 and 6 over SirRedhawk in view of "Freezing Lasagna" and Nilsson were addressed and maintained above, so is the rejection of Claim 4.

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maureen C. Donovan whose telephone number is (571) 272-2739. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MCD



**KEITH HENDRICKS
PRIMARY EXAMINER**